IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN INSOLVENCY

PETITION NO. 40 OF 2001

Re : Prakash Jain & Ors.

.... Debtors.

Ex-parte:

Pravin H. Meghani HUF

... Sub.Petg. Creditor.

Mr. S.J. Khira Adv. for Sub. Petitioning Creditor.

Mr. Ramesh Jain Adv. for Debtor No. 1.

Mr. D.D. Madon with Mr. G.R. Joshi i/by S.J. Khera for substituted petitioning creditor.

Mr. Sanjay Jain i/by Ramesh Jain for Debtor No. 1.

CORAM : S.U. KAMDAR, J.

DATE : 20th April, 2006.

P.C.:

. The present petition was filed by the original petitioning creditor seeking to declare the debtor no. 1 declaring insolvent. The said claim has been settled. Thereafter the present petitioner

has filed an application for substituting him as petitioner as a creditor of debtor no. 1. The said application has been granted and he has been substituted as a petitioning creditor. He has based his claim on a document i.e. the deed of mortgage dated 5.8.1996 being Exhibit A-1 to the petition. According to him under the aforesaid mortgage he is entitled to the claim of sum of Rs. 50 lacs towards the mortgage debt. The debtor no. 1 has filed an affidavit stating therein that he has repaid the entire loan amount in cash. In view of the fact that he has raised a contention that the payment has been made in cash of the sum of Rs 50 lacs with the interest accrued thereon the learned Single Judge of this Court passed an order on 3.8.2004 directing the Income-tax Authorities to examine the income tax file of the judgment debtor and produce the said file in Court. Pursuant thereto the Income-tax authorities have examined the income tax file of the said debtor. Subsequent to the further orders passed particularly an order dated 21.2.2006 the Income-tax Authorities have produced the file along with report dated 14.1.2006 before the Insolvency Registrar which inter alia reads as under:-

> " I have now located the old Income-Tax files of Mr. Prakashchand J. Jain bearing PAN Card No. AAEPJ 2334 A. I observe from the records that said Prakashchand J. Jain

had taken loan of Rs. 50 Lakhs from one Mr. P.H. Meghnanai during the financial year starting from 01.04.1996 to 31.03.1997. It is also observed from the records that he repaid the loan during the Financial Year 01.04.1996 to 31.03.1997, 01.04.1997 to 31.03.1998, 01.04.1998 to 31.03.1999 and 01.04.2000 to 31.03.2001. He repaid the entire loan as per the Income- Tax Returns filed by him as on 31st March, 2001 and the records produced by him before me."

2. I have also perused the returns and the balance sheets filed by the debtor no.1 before the Income Tax Authorities. It seems that the judgment debtor has indicated the repayment of the said loan amount with interest in cash. In view thereof it is not possible to accept the contention of the creditor who is seeking to substitute himself as a petitioning creditor that his claim is outstanding as due and payable. He further contends that it is not possible that a huge amount is paid in cash. He also contends that there are discrepancies in the returns which are filed by the debtor no. 1 along with balance sheets with the Income Tax Authorities and the returns which are filed with the affidavit dated 23.8.2005. The present petition is filed for a declaration that the debtor no. 1 is an insolvent because he is unable to discharge his debit. In my

opinion, the claim which has been founded by the petitioner is absolutely disputed in view of the contention that the same is repaid. Prima facie, the reliance placed on the income-tax returns indicate that the said claim is already repaid and is not outstanding. In any event, in my opinion, the present claim is not a claim which is clear and undisputed or such that on the basis of which an order of declaration of insolvency as against the debtor no. 1 can be passed. The claim being disputed and prima facie the debtor no. 1 having satisfied that the loan has already been repaid, in my opinion, unless the petitioning creditor files his own suit and proves his claim, no declaration can be granted in the present petition. The present petition is accordingly requires to be dismissed. The petition is accordingly dismissed. However, there shall be no order as to costs.

3. The file of the income tax to be resealed by the Insolvency Registrar and to be retained in a safe custody for a further period of 16 weeks from today.